

STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
Division of Workers' Compensation
220 French Landing Drive
Nashville, TN 37243
1-800-332-2667

CONSTRUCTION LAW WEB POSTING

Public Chapter 1149 (2010) re-writes the Workers' Compensation Law and applies to those *engaged in the construction industry*, effective March 1, 2011.

<http://state.tn.us/sos/acts/106/pub/pc1149.pdf>

Public Chapter 422 (2011) revises Public Chapter 1149 and applies to those *engaged in the construction industry*, effective October 1, 2011.

<http://www.tn.gov/sos/acts/107/pub/pc0422.pdf>

Section 3 (8) under Public Chapter 422 codifies the position of the Department, which reads as follows:

"Engaged in the construction industry" means any person or entity assigned to the contracting group as those classifications are designated by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in S 56-5-320; provided, where more than one (1) classification applies, the governing classification, as that term is defined by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320, shall be used to determine whether the person or entity is engaged in the construction industry;

When NCCI Basic Manual rules 2.E.1.b and 2.E.3 references "construction industry," the above definition should be used.

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http://www.tn.gov/insurance/documents/NCCI_ContractingIndustryGroupCodes.pdf

Public Chapter 1149 (2010) effective March 1, 2011

Important Workers' Compensation Provisions:

- Contractors with at least one full-time or part-time employee must carry workers' compensation coverage on their employees and in some cases on themselves depending on whether the contracted job is a commercial construction project, a residential construction project or whether the work is being performed directly for the property owner ("Handyman Exception")

- Generally, contractors on residential and/or commercial construction projects must carry workers' compensation coverage on themselves unless they are listed on the Secretary of State's Exemption Registry

See <http://tnbear.tn.gov/wc>; (limited exceptions are listed below)

- Commercial construction project means working on either buildings for commercial use where the total cost of the project is over \$750,000 OR residential structures with five (5) or more family unit residences or a family unit that is four (4) or more stories high

- All other family unit construction projects are residential

- If the job is a commercial construction project, the contractor must have workers' compensation coverage on himself/herself unless:

1) He/She has a written contract with a general contractor to provide workers' compensation coverage. The general contractor must file an I-15 Form (Agreement of General Contractor to Provide Workers' Compensation Coverage to Subcontractor) with the TN Dept. of Labor to prove such an agreement; See <http://www.tn.gov/labor-wfd/forms/i-15.pdf>

OR

1) He/She is listed on the Secretary of State's Exemption Registry;
See <http://tnbear.tn.gov/wc>

AND

2) He/She is either a construction manager or supervisor (class codes 5604 & 5606) not performing actual construction work OR is selected in writing as one of the three (3) exempt contractors on the project performing direct labor

- If the job is a residential construction project, the contractor must have workers' compensation coverage on himself/herself, unless he/she is listed on the Secretary of State's Exemption Registry (or meets the guidelines for exemption as a handyman).
<http://tnbear.tn.gov/wc/>

Public Chapter 422 (2011) effective October 1, 2011

Important Workers' Compensation Provisions:

- Allow general contractors on commercial construction projects to select any three (3) individuals who are performing direct labor to be exempt from workers' compensation coverage (previously a general could not select the individuals and it was done on a first come, first serve basis)
- Increase the number of owners (i.e. corporations, partnerships, limited liability companies, and family owned businesses) eligible for an exemption from three (3) to five (5)
- Allow members of a limited liability company (LLC) and partners in a limited partnership (LP), limited liability partnership (LLP) or general partnership with at least 20% ownership to be eligible for the exemption
- Allow an individual to obtain more than one exemption if the individual is affiliated with multiple companies designated to be in the contracting industry group according to their governing class codes

Other Important Workers' Compensation Provisions are Listed Below

- General contractor can accept an unlimited number of exemptions from their subcontractors for residential projects
- Contractors cannot require employees to pay any portion of the workers' compensation premium
- Contractors cannot coerce a job applicant or employee to register on the Secretary of State's Exemption Registry
- A contractor, doing work directly for the property owner without subcontracting, does not have to carry workers' compensation coverage on him or her self ("Handyman Exception") and does not have to be listed on the Secretary of State's Exemption Registry
- The initial penalty for failing to maintain workers' compensation coverage when the law requires the contractor to carry workers' compensation coverage is 1 ½ times the premium or \$1,000.00, whichever is greater (effective July 1, 2011)
- Corporate officers are considered employees of incorporated construction companies. The Corporation is required to carry worker's compensation coverage. Also, the corporate officers are required to be covered by the workers' compensation policy or up to five (5) corporate officers can be listed on the exemption registry

- A construction services provider building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on their own property is not required to carry workers' compensation coverage or be listed on the Secretary of State's Exemption Registry
- General contractor is required to inform a construction service provider who appears on the exemption registry and is selected as one of up to three (3) individuals that are exempt while working on the general contractor's commercial construction project. The general contractor is also required to maintain a record identifying each such construction services provider
- On a commercial construction project, a construction service provider who wishes to use an exemption can do so only with the approval of the general contractor unless he/she is covered on a workers' compensation policy
- General contractor on a commercial construction project may select any three (3) individuals who are performing direct labor to be exempt from workers' compensation coverage (previously a general could not select the individuals and it was done on a first come, first serve basis)
- General contractors may require all contractors to carry workers' compensation coverage under their own workers' compensation policy or elect coverage under the general contractor's policy by the filing of an I-15 Form

For more information, please contact the Secretary of State's Office concerning questions about the exemption registry application process at **615-741-2286** or workerscomp.exemptionregistry@tn.gov.

You may contact the Tennessee Department of Labor and Workforce Development (Workers' Compensation Division) regarding questions about the Construction Law Web Posting at **1-800-332-2667**.

Additional Resources:

Tennessee Department of Commerce and Insurance
(615) 741-0472

Board for Licensing Contractors
<http://www.tn.gov/commerce/boards/contractors/index.shtml>
(615) 741-8307 or 1-800-544-7693

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